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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 JACK DANIELS,

11 Plaintiff,

No. CIV S 04-0382 LKK CMK P

12 vs.

13 EMANUAL LATIMORE,

14 Defendant.

15 \_\_\_\_\_ / ORDER

16 Plaintiff brings this civil rights action pursuant to 42 U.S.C. § 1983. This  
17 proceeding was referred to the undersigned by Local Rule 72-302 by the authority of 28 U.S.C. §  
18 636(b)(1). Currently pending before the court is plaintiff's motion to compel. (Doc. 20.)  
19 Defendant has filed a response to plaintiff's motion. (Doc. 21.)

20 Plaintiff seeks an order compelling defendant Latimore, who is a Medical  
21 Technical Assistant, to produce various documents regarding to the Department of Corrections  
22 and Rehabilitation's (CDCR) policies concerning distributing medications to inmates and  
23 grievances concerning such distribution. Plaintiff has not filed any certification that he has, in  
24 good faith, attempted to confer with defendants concerning this discovery dispute as required by  
25 Local Rule 37-251(b). Accordingly, it is appropriate to deny his motion on procedural grounds.

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However, even if plaintiff had satisfied the meet and confer requirement of Local

1 Rule 37-251(b), he would still not be entitled to production of the documents that he requests.  
2 Plaintiff sought production from defendant of documents which describe the CDCR's policies,  
3 procedures or guidelines for creation of a rule that compels medical staff to distribute prescribed  
4 medication to inmates. Defendant Latimore responded that such documents were not in his  
5 custody or control; plaintiff conceded that such was true, but asserts that defendant should  
6 conduct a search to find such documents. The court finds that defendant Latimore has adequately  
7 responded to plaintiff's request and that plaintiff has the burden of seeking out other avenues to  
8 obtain such policies, procedures and guidelines.

9           Plaintiff sought production of documents which relate to defendant Latimore's  
10 failure or refusal to distribute prescribed medication to other inmates and any other allegations of  
11 unprofessional behavior by defendant Latimore. The court finds that defendant Latimore has  
12 adequately responded to plaintiff's discovery request by advising him that he does not have such  
13 documents in his possession. Further, it is not clear that this request is reasonably calculated to  
14 lead to the discovery of admissible evidence.

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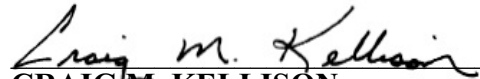
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26           Plaintiff's final contested discovery request is for the production of documents

1 which describe the CDCR's policies regarding distribution of nighttime medicine to inmates  
2 under the closed custody status and the medical charts signed by medical staff after the  
3 distribution of such medication. The court finds that defendant Latimore has adequately  
4 responded to plaintiff's discovery request by stating that such is not in his custody.

5 In light of the foregoing, IT IS ORDERED that plaintiff's motion to compel (doc.  
6 20) is denied.

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8 DATED: November 1, 2006.

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11 **CRAIG M. KELLISON**  
12 UNITED STATES MAGISTRATE JUDGE  
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